United Nations **AT**

Administrative Tribunal

Distr.
LIMITED

AT/DEC/993
16 July 2001

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 993

Case No. 1081: MUNANSANGU

Against: The Secretary-General of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Mayer Gabay, President; Mr. Spyridon Flogaitis; Mr. Omer Yousif Bireedo;

Whereas, on 21 June 1998, Mark Moono Munansangu, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas at the request of the Applicant, the President of the Tribunal, with the agreement of the Respondent, extended to 28 February 1999 the time-limit for the filing of an application to the Tribunal;

Whereas, on 26 February 1999, the Applicant again filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal

Whereas, on 7 May 1999, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read in part as follows:

(ii) Annul the decision … to separate the Applicant from service without notice (…).

(iiii) …, order the immediate reinstatement of the Applicant to his functions as Economic Affairs Officer of the United Nations Conference on Trade and Development (UNCTAD) with all salaries and related allowances and benefits from 4 June 1998 to the date of reinstatement.

(d) Amount of compensation in the event of a decision by the Secretary-General to pay compensation for the injury sustained:

In view of the loyal and excellent professional service rendered by the Applicant to the Organization as evidenced by his performance reports, the Tribunal is humbly requested to order payment of the following compensation:

(i) All salaries and related allowances and benefits until the date the Applicant will have reached the age of retirement.

In the alternative:

(ii) Payment of compensation calculated on the basis of the salary and allowances which the Applicant would have received had the date of termination been at the end of *three months notice* period in accordance with staff rule 109.3;

and

(iii) Payment of *termination indemnity* under [staff] regulation 9.3 and Annex III to the Staff Regulations calculated on the basis of the Applicant's gross salary less staff assessment in accordance with staff rule 109.4 and staff regulation 3.3 (b) (i).

(e) Other Relief Requested

The Tribunal is requested to order a lesser disciplinary measure than separation without notice under staff rule 110.3. Separation without notice and without indemnity compensation is cruel and unusual punishment to the Applicant in view of his loyal and excellent service to the Organization as evidenced by his performance evaluation reports.

Further, the Applicant's children are still in college and university in the United States and Canada and depend on him for fees and other financial support. Therefore, on humanitarian grounds, the Tribunal is humbly requested to grant the

Applicant compensation, *in particular 3 MONTHS SALARY AND ALLOWANCES AND TERMINATION INDEMNITY."*

Whereas the Respondent filed his Answer on 31 July 2000;

Whereas the Applicant filed Written Observations on 30 April 2001;

Whereas the facts in the case are as follows:

On 4 February 1981, the Applicant entered the service of UNITAR in New York as a Project Officer under a Special Fellowship. His fellowship expired on 31 December 1983, and on 1 January 1984 he began a two-year, fixed-term appointment with UNCTAD in Geneva as an Economic Affairs Officer at the P-3, step 3 level. At the expiration of his fixed-term appointment in January 1986, he received a probationary appointment as an Economic Affairs Officer at the P-3 level. His appointment was made permanent on 1 July 1986. The Applicant was dismissed without notice for serious misconduct on 4 June 1998. At the time of his separation from service, he was serving as an Economic Affairs Officer at the P-3, step 15 level.

Between 1987 and 1997, the Applicant was involved in a series of incidents, many of which were alcohol-related. These incidents included:

- Abusive telephone calls made to a colleague on 30 June 1987;
- Detention by the police on 15 April 1988, following complaints of "noise, scandal, altercation and drunkenness" from his neighbours;
- Attendance by the police on 13 April 1989, pursuant to a call from his wife;
- Driving under the influence of alcohol and traffic violations on 8 January 1990, for which the Applicant was fined 1,600 Swiss Francs;
- An incident at the International Telecommunication Union (ITU), his wife's place of employment, on 11 August 1991, which resulted in the Applicant's detention by the police and his subsequent banning of access to ITU.

The Organization learned of the Applicant's behaviour primarily from the police agencies involved, the UNOG security service and the Swiss Mission, rather than from the Applicant. On 15 October 1987, the Applicant was informed that the Geneva police department had notified the

Organization of the 13 September incidents and was warned that the acts were serious. He was asked to advise the Organization as to the outcome of the complaints against him, and to contact the UN Joint Medical Service. Following the 15 April 1988 incident, the Staff Counsellor met with the Applicant on 27 April 1988, and on 10 May 1988, the Applicant was reminded by the Chief, Personnel Administration Section, Personnel Service, UNOG, of his obligation to inform the Organization of such incidents, asked to avoid infringing the Organization's interests, and further admonished that he needed to set himself a higher standard of conduct. His attention was drawn to the Standards of Conduct again in a memorandum from the Senior Legal Officer, Legal Liaison Office, UNOG, on 14 December 1988, after the Applicant claimed that the motorcycle accident on 27 September 1988 was a private matter which should not have been brought to the Organization's attention. On 15 August 1991, the Chief, Personnel Service, UNOG, wrote to the Applicant concerning the 11 August 1991 incident at ITU. He drew the Applicant's attention to the serious nature of the incident and noted that this was not the first incident about which the Organization had been advised.

Between 1987 and 1995, the Applicant was treated for his alcoholism on a number of occasions.

The Organization was also made aware of a series of unpaid debts incurred by the Applicant. On 6 October 1992, the Organization was contacted by a debt collection agency acting on behalf of the Applicant's former doctor, after he failed to honour an agreement to pay a debt of 2,154 Swiss Francs. On 28 March 1995 and 25 January 1996, it was informed that the Applicant owed outstanding fees to the International School, Geneva, Quinnipiac College, United States, respectively. On 30 April 1996, a debt collection agency advised the Organization that judgement had been entered against the Applicant for a debt owed to Mayfield School in the United Kingdom. On 4 August, several unpaid medical bills were brought to the attention of the Organization.

On 26 August 1996, the Chief, Personnel Service, UNOG, informed the Applicant that, in light of the criminal conviction he received following the incident on 21 January 1995, his continued indebtedness to third parties, the lack of proof that he was providing financial support to his family, and the numerous incidents which had occurred, a preliminary investigation was being launched in accordance with administrative instruction ST/AI/371, entitled "*Revised Disciplinary Measures and*

Procedures, of 2 August 1991. The Chief, Personnel Service, UNOG, sent the findings of this preliminary investigation to the Assistant Secretary-General for Human Resources Management on 5 May 1997. On 19 June 1997, the Chief, Administrative Law Unit, informed the Chief, Personnel Service, UNOG, that the Assistant Secretary-General for Human Resources Management agreed that the Applicant should be placed on special leave with full pay pending investigation and disciplinary action. The Applicant was informed of this decision, along with the allegations against him, on 23 June 1997 by the Chief, Personnel Service, UNOG.

On 29 August 1997, the Chief, Administrative Law Unit, informed the Chief, Personnel Service, UNOG, that the Secretary-General had decided to refer the Applicant's case to the Joint Disciplinary Committee. This decision was communicated to the Applicant by the Chief, Personnel Service, UNOG, on 22 September 1997.

The Joint Disciplinary Committee (JDC) adopted its report on 7 May 1998. Its conclusions and recommendation read as follows:

> "CONCLUSIONS AND RECOMMENDATION
>
> 143. The Panel **concludes** that the staff member has breached [A]rticle 101 of the United Nations Charter, paragraphs 53, 54 and 55 [of the Report] o[n] the Standards of Conduct [in the International Civil Service 1954, Coord/Civil Service/5 (1986 Edition)], and [administrative instruction] ST/AI/399 [entitled]"*Financial and Other Personal Obligations of Staff Members*" [of 14 December 1994].
>
> 144. The Panel therefore **recommends** to the Secretary-General that the staff member be **separated from service without** notice on the grounds of serious misconduct incompatible with the basic requirements to be met by a United Nations staff member."

On 1 June 1998, the Under-Secretary-General for Management transmitted to the Applicant a copy of the JDC report and informed him as follows:

> "...
>
> ... In respect of the procedural issues raised, [the Secretary-General] has taken note of the Committee's finding that, in accordance with the relevant staff rules and administrative issuances, your case was no longer a medical matter but a disciplinary matter

relating to your conduct as an international civil servant, and that the Committee had competence to consider the charges brought against you.

The Secretary-General has taken note that the Committee has separated the charges against you into 'financial obligations' and 'personal conduct'. In respect of the charge relating to financial obligations, the Secretary-General has taken note of the Committee's finding that your non-fulfillment of your financial obligations, in spite of the assistance and repeated warnings provided by the Organization, constituted a flagrant violation of the administrative instruction on *Financial and Other Obligations of Staff Members*, ST/AI/399 of 14 December 1994, and that your alcohol problem did not excuse your actions. In regard to the charges concerning your personal conduct, the Secretary-General has taken note of the Committee's findings that you had exhausted the measures provided for in the administrative instruction on *Employee Assistance in Cases of Alcohol/Substance Abuse*, ST/AI/372 of 25 September 1991; that the serious incidents in which you were involved outside the Organization were relevant to a determination of your conduct as a staff member and could be used to support the charges against you; that your traffic violations and matrimonial conflicts and their ramifications, were relevant to a determination that your conduct was well below the standards set by the Report on Standards of Conduct; and that your professional conduct was indeed affected by your alcohol problem.

The Secretary-General has given careful consideration to the findings of the Committee, especially in the light of the sensitive issues involved, and he is in agreement with these findings. He has particularly taken note of the Committee's references to paragraph 6 of ST/AI/399 and paragraph 26 of ST/AI/372 dealing with the initiation of disciplinary measures after the exhaustion of other remedies. He has also noted that the provisions of ST/AI/372 are concerned with the effect of alcohol abuse on a staff member's behaviour as well as job performance. The Secretary-General is aware that, although you have been given every opportunity over an ample period of time, you have failed to correct your pattern of behaviour.

The Secretary-General is in agreement with the Committee's conclusion that you breached Article 101 of the United Nations Charter, paragraphs 53, 54 and 55 of the Report on Standards of Conduct, and ST/AI/399, *Financial and Other Personal Obligations of Staff members*. He is also in agreement with the Committee that your behaviour constituted serious misconduct incompatible with the basic requirements to be met by a United Nations staff member.

Based on the above findings and conclusions, and in accordance with the recommendation of the Committee, the Secretary-General has decided to separate you from service without notice pursuant to staff rule 110.3 (vii) with effect from close of business on the day you receive this letter.

In accordance with staff rule 110.4 (d), any appeal you might wish to file in respect of the above decision should be submitted directly to the Administrative Tribunal."

On 7 May 1999, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The JDC erred in its fact finding.

2. The Respondent erred in placing reports of the Staff Counsellors on their interaction with the Applicant in the dossier it submitted to the JDC.

3. The Applicant did not violate Article 101 of the UN Charter as his favourable performance reports attest to his diligence and loyalty.

4. The Applicant did not violate Article 53 of the Standards of Conduct as the incidents of misconduct alleged occurred within the privacy of his matrimonial home.

5. The Applicant's recovery process is progressing; he has been under the care of a doctor since May 1997 and there have been no further relapses.

6. The Applicant did not violate Articles 54 and 55 of the Standards of Conduct as his only violations of the laws of Switzerland and France were traffic violations.

7. The Applicant did not violate ST/AI/399 as his personal debts to outside claimants are primarily related to his children's education. Further, he has made arrangements to repay these debts by installment.

Whereas the Respondent's principal contentions are:

1. The Secretary-General has broad discretion with regard to disciplinary matters, and this includes determination of what constitutes misconduct warranting dismissal. The Secretary-General's decision to dismiss the Applicant without notice for serious misconduct was a valid exercise of that discretionary authority.

2. The decision to dismiss the Applicant was based on facts adduced by the JDC and was not vitiated by mistake of fact, by lack of due process, prejudice or other extraneous factors.

3. The decision to dismiss the Applicant for serious misconduct was not disproportionate to the Applicant's misconduct.

The Tribunal, having deliberated from 29 June to 16 July 2001, now pronounces the following judgement:

I. The Applicant appeals the decision to separate him from service on the grounds of serious misconduct incompatible with the standards of conduct expected of a United Nations staff member. The Applicant claims that he did not violate the Staff Regulations and Rules, or standards of conduct. He further claims that the JDC erred in its findings.

II. The Applicant has a ten-year history of misconduct and alcohol abuse documented with the French and Swiss police, and the Organization. The series of incidents commenced with a complaint received by an UNCTAD staff member on 30 June 1987, concerning the Applicant's abusive calls to the complainant's home. During those calls, the Applicant appeared to be under the influence of alcohol. On 15 April 1988, the Swiss police detained the Applicant following complaints by neighbors in his apartment building. The Respondent reminded the Applicant on 10 May 1988 that he had a duty to report any arrests to the Organization and also put him on notice that his conduct was not consistent with that expected of an international civil servant.

In addition, on 19 September 1989, the Swiss Mission notified the Legal Liaison Office, UNOG, that the Applicant's Swiss driver's license had been suspended for two months after the police responded to a call from the Applicant's spouse on 13 April 1989 concerning domestic violence at the Applicant's home, and found the Applicant's children taking refuge on the balcony. In July 1991, he was involved in another violent, alcohol-related domestic disturbance.

On 15 August 1991, the Chief, Personnel Service, UNOG, wrote to the Applicant, informing him that an incident which had taken place at ITU on 11 August 1991, involving yet another drunken disturbance, could constitute grounds for disciplinary action, and requested him to provide an explanation. The Applicant informed the Organization that he continued to seek alcohol

dependency treatment. Subsequently, there were several other incidents of alcohol-related domestic violence, and verbal harassment of staff members culminating on 23 June 1997 when the Applicant was charged with misconduct and suspended with pay pending completion of disciplinary proceedings. The Applicant responded to the charges on 9 July 1997.

III. The JDC found that the Applicant's professional conduct had been affected by his alcohol problem and that the Applicant had breached various rules and regulations, and recommended to the Secretary-General that the Applicant be separated from service without notice on the grounds of serious misconduct. On 4 June 1998, the Secretary-General decided to separate the Applicant from service, without notice, pursuant to staff rule 110.3 (vii).

IV. The Applicant seeks to rescind the Respondent's decision to dismiss him for serious misconduct. Article 100, paragraph 1, and Article 101, paragraph 1, of the Charter set forth the basic obligations of the Secretary-General and staff to the Organization and the Organization's responsibility for appointment of staff. The Tribunal has repeatedly affirmed that the Charter and the Staff Regulations vest in the Secretary-General the authority to determine whether a staff member has met the required standards of conduct. The choice of disciplinary measure to be imposed pursuant to staff regulation 10.2 falls within the Secretary-General's discretionary powers. (Judgements No. 515, *Khan* (1991); No. 542, *Pennacchi* (1991); No. 941, *Kiwanuka* (1999).) The Tribunal finds that the Respondent's actions did not fall outside the scope of its broad discretionary powers and that the Respondent provided ample opportunities and assistance for the Applicant to rehabilitate himself. Staff members have a duty to maintain a high standard of conduct even in matters unconnected with their official duties. The International Civil Service Commission Report, paragraph 53, cited by the JDC, states that a staff member "must bear in mind that his personal conduct, whether connected or unconnected with official duties, must be such that it will not infringe upon any demonstrable interests of the organization he serves, bring it into discredit, or offend the community in which he lives".

The JDC found that the Applicant's conduct failed to meet the highest standards of conduct required of staff members. Based on a ten-year history of abuse where the Organization and the

French and Swiss police had to intervene, the Tribunal finds that the Respondent's actions of dismissal were not only reasonable but also necessary.

V. The Tribunal finds the Secretary-General's dismissal of the Applicant was a valid exercise of his discretionary power. The Tribunal has consistently maintained that its competence to review the Secretary-General's discretionary powers to discipline staff is confined to determining whether the Secretary-General's actions were vitiated by any prejudicial or extraneous factors, by significant procedural irregularity, or by a significant mistake of fact, amongst additional criteria. (See Judgements No. 490, *Liu* (1990); No. 515, *Khan* (1991); and No. 616, *Sirakyan* (1993).)

In disciplinary cases, the Tribunal generally examines (i) whether the facts on which the disciplinary measures were based have been established; (ii) whether the established facts legally amount to misconduct or serious misconduct; (iii) whether there has been any procedural irregularity; (iv) whether there was an improper motive or abuse of purpose; (v) whether the sanction is legal; (vi) whether the sanction imposed was disproportionate to the offence; (vii) and, as in the case of discretionary powers in general, whether there has been arbitrariness (See Judgements No. 898, *Uggla* (1998); No. 941, *Kiwanuka* (1999).)

The Tribunal finds that all appropriate procedures were followed in this case.

VI. In conclusion, the Tribunal holds that the Secretary-General exercised reasonable and necessary discretion under the Staff Regulations and Rules by concluding that the Applicant had engaged in serious misconduct and that he failed to meet the highest standards of conduct expected of an international civil servant. Further, the Tribunal holds that the Secretary-General did not violate the Applicant's rights of due process by dismissing him without notice.

VIII. For the foregoing reasons, the Tribunal rejects all pleas in their entirety.

(Signatures)

Mayer GABAY
President

Spyridon FLOGAITIS
Member

Omer Yousif BIREEDO
Member

Geneva, 16 July 2001

Maritza STRUYVENBERG
Executive Secretary